

Part III - Administrative, Procedural, and Miscellaneous

Fractional Aircraft Ownership Programs Fuel Surtax

Notice 2012-27

This notice provides guidance relating to the application of the tax imposed by § 4043 of the Internal Revenue Code (Code) on fuel used in fractional program aircraft. Section 4043 was added to the Code by section 1103 of the FAA Modernization and Reform Act of 2012 (Act) (Pub. L. 112-95) and applies to fuel used after March 31, 2012.

Section 4043 imposes a \$0.141-per-gallon tax on any liquid used in a fractional program aircraft as fuel (1) for the transportation of a qualified fractional owner with respect to the fractional ownership aircraft program of which such aircraft is a part, or (2) with respect to the use of such aircraft on account of such a qualified fractional owner, including use in deadhead service.

In general, a fractional ownership aircraft program is a system of aircraft ownership and exchange that involves a single program manager that manages a fleet of aircraft on behalf of fractional owners. Participation in a fractional ownership aircraft program entitles the owner to fly on any of the aircraft in the program's fleet on an on-

available basis, regardless of whether the owner has an ownership interest in the aircraft in which the owner travels. The terms “fractional program aircraft,” “fractional ownership aircraft program,” and “qualified fractional owner” are defined in § 4043(c).

The following rules apply with respect to § 4043:

- Section 4043 imposes a tax at the rate of \$0.141-per-gallon on the use of any liquid fuel in the propulsion system of a fractional program aircraft engaged in the activities described in § 4043(a).
- The fractional ownership program manager, rather than fractional owners, is liable for the tax imposed by § 4043.
- If tax is imposed by § 4043 on the fuel used in a flight, the taxes imposed by §§ 4261 and 4271 (related to amounts paid for taxable transportation) do not apply to that flight.
- Section 4043 applies in addition to any other taxes imposed on the removal, entry, use, or sale of the fuel. If tax is imposed by § 4043 on fuel used in a flight, the flight is not commercial aviation for purposes of the fuel tax imposed by § 4081.
- Fractional program aircraft are not considered used for the transportation of a qualified fractional owner, or on account of such qualified fractional owner, when they are used for flight demonstration, maintenance, or crew training. In such situations, the flight is not commercial aviation for purposes of the fuel tax imposed by § 4081. As a result, the § 4081 tax on the fuel used in the flight is imposed in the case of kerosene at the noncommercial aviation rate of

\$0.219 per gallon.

- Fractional ownership program managers must report the tax imposed by § 4043 on Form 720, Quarterly Federal Excise Tax Return, in accordance with instructions to that form. For example, for fuel used in April, May, and June of 2012, the manager must report the tax on Form 720 for the second quarter of calendar year 2012, and must file the Form 720 by July 31, 2012.
- Persons liable for the § 4043 tax are generally required to make semimonthly deposits of tax in accordance with § 40.6302(c)-1 of the Excise Tax Procedural Regulations. Thus, for example, the deposit covering the first fifteen days in April 2012 is due by April 27, 2012. For further information regarding excise tax deposit requirements, see the instructions to Form 720.

The principal author of this notice is Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Beker on (202) 622-3130 (not a toll-free call).